

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:20CV85-GCM

HELEN CASSARA and JOYCE RIGGIN,)	
an individual and power of attorney for)	
HELEN CASSARA, an elderly adult,)	
)	
Plaintiffs,)	
)	
v.)	ORDER
)	
PNC BANK, N.A., et <i>al.</i> ,)	
)	
Defendants.)	
_____)	

This matter is before the Court upon Defendants’ Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (Doc. No. 12), Plaintiff Joyce Riggins’ Motion for Extension of Time to Substitute Party (Doc. No. 21), and Defendant PNC Bank, N.A.’s Motion to Dismiss for failure to state a claim (Doc. No. 22).

Plaintiff Joyce Riggins filed this action against Defendants on February 10, 2020 as power of attorney for Helen Cassara. Ms. Cassara passed away on February 21, 2020, as evidenced by the Suggestion of Death filed by Defendants on April 7, 2020. The same Defendants filed a Motion to Dismiss one week later, on April 14, seeking to have the case dismissed, arguing that Plaintiff Riggins lacked standing to sue because her power of attorney expired upon Ms. Cassara’s death.

Rule 25 of the Federal Rules of Civil Procedure governing substitution of parties provides that “[a] motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P.

25(a)(1). Defendants filed and served the Suggestion of Death on April 7 (Doc. No. 11). Ninety days have not yet elapsed. Accordingly, Defendants' Motion pursuant to Rule 12(b)(1) is premature, as is Plaintiff Riggin's Motion for Extension of Time. Both are denied without prejudice and may be refiled, if necessary, at a later date. Defendant PNC Bank, N.A.'s Motion to Dismiss pursuant to Rule 12(b)(6) will be held in abeyance until such time as a substitution of party is made by Ms. Riggin, or the time expires with no such substitution or request for extension of time for substitution.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss pursuant to Rule 12(b)(1) and Plaintiff's Motion for Extension of Time to Substitute Party are hereby denied at this time with leave to refile;

IT IS FURTHER ORDERED that Defendant PNC Bank, N.A.'s Motion to Dismiss is held in abeyance at this time.

Signed: May 12, 2020

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

